

## Message Text

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ACTION EB-07

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E.O. 11652: N/A  
TAGS: ETRD, EEC, EGEN  
SUBJECT: MEETINGS WITH EC OFFICIALS ON ANTITRUST COOPERATION

REF: STATE 289830

1. SUMMARY: ASSISTANT ATTORNEY GENERAL BAKER'S DECEMBER 13 VISIT TO BRUSSELS ALLOWED USEFUL INFORMAL EXCHANGE WITH EC COMMISSION ON US AND EC ANTITRUST PROCEDURES AND THE POSSIBILITY OF A US/EC AGREEMENT ON ANTITRUST COOPERATION. COMMISSION OFFICIALS SAID THAT EUROPEAN PROTECTION OF "BUSINESS SECRETS" MADE IT UNLIKELY THAT ANY AGREEMENT REACHED NOW WOULD PROVIDE US AUTHORITIES WITH MUCH INFORMATION. END SUMMARY.

2. MEETING BEGAN WITH A LENGTHY REVIEW OF EC ANTITRUST TECHNIQUES AND PROCEDURES AND THEN DISCUSSION CENTERED ON AN INFORMAL COMMISSION DRAFT BASED ON THE EXISTING US/FRG ANTITRUST AGREEMENT. EC DIRECTOR GENERAL FOR COMPETITION AFFAIRS, WILLY SCHLIEDER, SAID IT WAS IMPORTANT FOR THE US AND EC TO COOPERATE IN THIS AREA BECAUSE ANTI-COMPETITIVE TRADE AND BUSINESS PRACTICES  
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ARE INCREASINGLY CONDUCTED ON A TRANSNATIONAL BASIS, E.G., LICENSING AGREEMENTS AND CARTELS--THEREFORE, ANTI-TRUST AUTHORITIES HAVE TO OPERATE ON A TRANSNATIONAL BASIS ALSO. SCHLIEDER MADE CLEAR THAT THE EC COUNCIL HAD GIVEN THE COMMISSION NO MANDATE TO NEGOTIATE AN ANTITRUST COOPERATION AGREEMENT. NEVERTHELESS, THE

COMMISSION SERVICES HAD PREPARED AN INFORMAL DRAFT AGREEMENT AS A BASIS FOR CONVERSATION.

3. US SIDE, LED BY BAKER, INDICATED THAT THE EC DRAFT AGREEMENT, WHILE GREATLY RESEMBLING THE AGREEMENT CONCLUDED IN MAY BETWEEN THE US AND THE FRG, SEEMED TO REQUIRE LESS ASSISTANCE AND TO IMPOSE MORE BURDENSOME NOTIFICATION REQUIREMENTS ON THE REQUESTING PARTY.

4. SCHLIEDER ACKNOWLEDGED THE RELATIVE WEAKNESS OF THE DRAFT AND EXPLAINED THAT THE PROVISIONS HAD BEEN SOMEWHAT WATERED DOWN WITH THE THOUGHT THAT SUCH A DRAFT WOULD BE MORE EASILY SALEABLE TO MEMBER STATES. SCHLIEDER INDICATED THAT HE WAS NOT PARTICULARLY HAPPY WITH THE DRAFT AND WOULD PREFER TO REPLACE IT WITH A SINGLE ARTICLE--ONE THAT WOULD ALLOW ANTITRUST OFFICIALS OF SIGNATORY GOVERNMENTS TO MEET AND DISCUSS FREELY ALL ANTITRUST MATTERS OF COMMON INTEREST EVEN THOSE WHICH INVOLVED BUSINESS SECRETS.

5. BUSINESS SECRETS WERE, ACCORDING TO SCHLIEDER, THE CRUX OF THE PROBLEM. IN THE EC THE CONCEPT OF BUSINESS SECRETS INCLUDES ALMOST ANYTHING THAT BUSINESSES DON'T WANT OTHERS TO KNOW. IT EXTENDS FAR BEYOND THE US CONCEPT, WHICH IS GENERALLY LIMITED TO SUCH THINGS AS FORMULAS, APPLICATION OF KNOW-HOW, AND CUSTOMER LISTS, I.E., TRADE SECRETS. SCHLIEDER AGREED WITH BAKER'S OBSERVATION THAT THE INFORMATION UNEARTHED BY THE COMMISSION IN ITS ARTICLE 86 INVESTIGATIONS WOULD BE OF THE SORT THAT COMPANIES WOULD CLAIM TO BE BUSINESS LIMITED OFFICIAL USE

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SECRETS--AND NOT TRANSFERABLE TO THE US.

6. SCHLIEDER SAID THAT THE DRAFT WAS NOT VERY STRONG BECAUSE IT DID NOT PRESENTLY ALLOW TRANSFER OF SUCH "BUSINESS SECRET" INFORMATION. INDUSTRIAL AND MEMBER STATE OPPOSITION VIRTUALLY PRECLUDED ANY CHANCE OF INCLUDING SUCH A PROVISION IN AN AGREEMENT, WHICH THE EC COUNCIL MUST APPROVE. HE SAID THE COMMISSION'S ONLY SUPPORT ON THIS MATTER WOULD COME FROM THE EUROPEAN PARLIAMENT. SCHLIEDER ALSO SAID THAT WHILE THE COMMISSION COULD REDRAFT AN AGREEMENT TO REQUIRE ASSISTANCE AS FORTHCOMING AS IN THE US/FRG AGREEMENT, IT WOULD BE HARDER TO GET MEMBER STATE APPROVAL. EVEN THE US/FRG AGREEMENT HAD VERY LIMITED VALUE SINCE IT TOO PREVENTED COMMUNICATION OF BUSINESS SECRETS.

7. SCHLIEDER SAID ANY AGREEMENT WHICH THE COUNCIL COULD APPROVE AT THE MOMENT WOULD INCLUDE LIMITATIONS ON

COMMISSION ACTIVITY. CONSEQUENTLY HE EXPRESSED CONCERN THAT AN AGREEMENT MIGHT BE A STEP BACKWARDS FROM WHAT HE DESCRIBED AS THE QUOTE PRESENT LEVEL OF COOPERATION BETWEEN US UNQUOTE. SCHLIEDER ALSO POINTED OUT THAT BECAUSE OF EC ATTITUDES TOWARD BUSINESS SECRETS, COMPANIES WOULD OFTEN GIVE THE COMMISSION INFORMATION WHICH THEY WOULD REFUSE TO GIVE US AUTHORITIES. HE THOUGHT THAT AN AGREEMENT BETWEEN THE US AND THE EC WOULD JEOPARDIZE THIS SOURCE OF INFORMATION SINCE COMPANIES WOULD FEAR THAT THE COMMISSION WOULD BE REQUIRED TO DIVULGE IT ON REQUEST TO US ANTITRUST AUTHORITIES. A RECENT EXAMPLE OF THIS INFORMATION, HE SAID, WAS COMPLIANCE BY OIL MAJORS DURING THE 73-74 CRISIS PERIOD WITH A COMMISSION REQUEST FOR F.O.B. OIL PRICES. THE COMPANIES TOLD SCHLIEDER THAT THEY WOULD NEVER HAVE MADE SUCH INFORMATION AVAILABLE TO US AUTHORITIES.

8. BAKER RESPONDED THAT THE US WOULD ALSO WANT TO LIMITED OFFICIAL USE

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AVOID ANY AGREEMENT WHICH WOULD BE MOSTLY SHOW AND RESULT IN US AND EC DOING LESS THAN THEY PRESENTLY DO IN THESE AREAS. AN AGREEMENT COULD, HOWEVER, BE A USEFUL TOOL WHICH COULD BE USED TO PRY LOOSE MATERIAL WHICH MIGHT OTHERWISE BE KEPT CONFIDENTIAL, AND WOULD FURTHER REPRESENT A COMMITMENT TO STRONG EFFORTS IN GOOD FAITH. BAKER ALSO EXPRESSED THE VIEW THAT COMPANY CONFIDENCES SUCH AS THOSE MENTIONED BY SCHLIEDER WOULD BE MORE USEFUL IF THE COMPANIES KNEW ANTITRUST OFFICIALS WERE ABLE TO CHECK THE STORY WITH EACH OTHER THUS PREVENTING COMPANIES FROM TELLING DIFFERENT STORIES TO DIFFERENT ANTITRUST AUTHORITIES.

9. BAKER TOLD THE COMMISSION THAT UP UNTIL NOW CONSIDERATION WITHIN THE US GOVERNMENT OF A US/EC AGREEMENT HAD BEEN ON AN INFORMAL BASIS, BUT THE REST OF THE GOVERNMENT WOULD HAVE TO BE BROUGHT IN AT SOME STAGE. HE INDICATED THAT FOR THE IMMEDIATE FUTURE, HOWEVER, IT WOULD BE USEFUL TO FURTHER EXPLORE RESPECTIVE PRACTICES ON CONFIDENTIALITY AND INVESTIGATORY TECHNIQUES, TO PROVIDE ESSENTIAL BACKGROUND UNDERSTANDING FOR ANY AGREEMENT WHICH MIGHT BE EVENTUALLY CONSIDERED.

10. THIS CABLE WAS PREPARED AFTER ASSISTANT ATTORNEY GENERAL BAKER'S DEPARTURE. HINTON

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